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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/744,123	03/15/2001	Victor Marcus Lewis	14219	2983
7590 03/11/2004			EXAMINER	
Scully Scott Murphy & Presser 400 Garden City Plaza Garden City, NY 11530			PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 03/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/744,123

Applicant(s)

LEWIS ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. 5,723,167 in view of Rahman et al. 3,950,560 and Rahman et al. 4, 109,026.

Lewis et al. disclose a product and process of making a dehydrated vegetable by dehydrating a vegetable piece (claims 2 and 10) to between 15 and 60% (claims 7 and 9), and compressing the vegetables as in claims 9 and 10 (col. 9, lines 20-30, col. 2, lines 49-55). Water activity controlling solutes as in claims 3, 4, 11 and 12, 17 and 18 can be added to the vegetables before pressing (col. 5, lines 35-64 and col. 10, lines 20-30). They are used in amounts from 2-6% (col. 6, lines 60-64). Claims 5 and 6 further requires that the vegetable product have an even lower moisture content of 2-12% and 4% respectively, claim 8 requires that the compressed piece is further dehydrated to from 2-10% and claim 13 further requires that the compressed vegetable piece is dehydrated to from 2-12% moisture. Lewis et al. also disclose a dehydrated vegetable product which contains a moisture content of between 15 and 60%. Claims 1-13, 15, 17 and 18 differ from the reference in the step of further dehydrating to a moisture content of 12% or lower. The Rahman et al. references '560 and '260 disclose

first drying a vegetable to from 7-18% then compressing the predried vegetable, and then redrying the compacted vegetable to less than 5% (abstracts). Therefore, it would have been obvious to dehydrate to a lower degree in the process of Lewis et al. using the further drying steps of the Rahman et al references.

The further limitation as in claims 1 and 9 as to rehydrating the vegetable pieces are disclosed since the process and process has been disclosed. Therefore, it would have been obvious to make a product, which had the claimed rehydration characteristics.

Claim 14 further requires drying the vegetable piece to from 4-6%. Rahman et al. disclose drying cabbage to 5-8 % before rehydrating to 10-20% and then compressing (abstract). The step of rehydrating to 10-20% is not excluded from the reference. Therefore, it would have been obvious to dry to within the claimed level as shown by Rahman '026 in the process of Lewis et al.

Claim 15 further requires that the vegetable piece is compressed in a roller mill to 0.2 to 2.5 mm. Rahman et al. disclose a compression of from 1/8 to 1/2 inch thickness. The particular apparatus is not given weight in a composition claim. It would have been within the skill of the ordinary worker to press to a particular size. Therefore, it would have been obvious to press a vegetable to a particular size as shown by Rahman et al.

Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to claims 1-15, 17, 18 above, and further in view of Sterner et al. (4,735,816).

Sterner et al. disclose a method of partially drying beans and pressing the beans into flakes and then further dehydrating the pressed bean flakes (col. 3, lines 32-35, col. 4, lines 49-66). The beans are pressed to a thickness from 0.005 inches to 0.2 inches, which is within the claimed range. Therefore, it would have been obvious to press other vegetables at within the claimed range as in the process of the above combined references which are also to be dehydrated in order to promote drying of the vegetables (col. 3, lines 36-40).

ARGUMENTS

Applicant's arguments filed 12-15-03 have been fully considered but they are not persuasive. Applicants argue that it is critical that the moisture content of the vegetable product be in the range of from 15-60% because below that the vegetable becomes hard, and fragile and brittle when frozen and that this teaches away from the claimed invention. However this is not seen because no limitations as to freezing are seen in the claims, which makes the references combinable.

Applicants argue that the reference to Rahman et al. '026 does not produce a product that is rehydrated in the claimed time. This presents a dilemma because the limitations of the product and process have been shown. Applicants have not presented enough processing and product limitations to remove the cited references.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 757-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HP 3-3-04


HELEN PRATT
PRIMARY EXAMINER